United Nations Convention on the Law of the Sea SPLOS/242

Meeting of States Parties

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Report on budgetary matters for the financial periods 2009-2010 and 2011-2012

Presented by the Registrar of the International Tribunal for the Law of the Sea

I. Surrender of cash surplus for the financial period 2009-2010

A. Introduction

1. In June 2011, the twenty-first Meeting of States Parties took note (see SPLOS/231, para. 35) of the report of the external auditor for the financial period 2009-2010 (SPLOS/223), which had been submitted to the Meeting by the Tribunal. According to the report, the final excess of income over expenditures as at 31 December 2010 amounted to €2,059,041.

2. As explained in the report on budgetary matters for the period 2009-2010 (SPLOS/224, paras. 2 and 3), the performance for this financial period is largely due to the level of expenditure incurred under part C of the budget (case-related costs). As regards recurrent and non-recurrent expenditures (parts A and B), the budget was utilized up to 97.52 per cent. With respect to case-related costs (part C), the appropriation amount of €2,564,700 was, as in previous budgetary periods, calculated on the basis of four urgent proceedings. During the financial period concerned, the Tribunal dealt with one urgent proceeding (Case No. 18, *The M/V "Louisa" Case (Saint Vincent and the Grenadines* v. *Kingdom of Spain)*) and the Seabed Dispute Chamber of the Tribunal (composed of 11 members selected by a majority of the elected members of the Tribunal from among them) dealt with a request for an advisory opinion (Case No. 17) submitted to it by the International Seabed Authority. Under article 191 of the Convention, such a request has to be dealt with by the Chamber as a matter of urgency. As a result, savings amounting to €1,565,549 were made under part C.

3. Under "staff costs" there were savings amounting to €60,898. This was due to vacant positions in the Registry during the period in question. The final balance of the budget section "judges" stands at €129,649, although an overexpenditure totalling €54,041 occurred in the budget lines "annual allowances" and "judges'

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pension scheme". The final balance is a result of savings realized under the budget lines "special allowances", "travel to sessions" and "common costs". It may be noted that savings under "special allowances" came mainly from a reduction in the rate of daily subsistence allowance for Hamburg to €247 during 2009-2010, while the budget was based on an amount of €267.

B. Provisional cash surplus

4. Under regulation 4.4 of the Financial Regulations, the provisional cash surplus is determined by establishing the balance between credits (assessed contributions actually received and miscellaneous income received and additional appropriations) and charges (disbursements against appropriations and provisions for unliquidated obligations). For the financial period 2009-2010, the final excess of income over expenditures amounts to €2,059,041, and is calculated as follows (in euros):

Credit	17 680 983
Reserve to finance additional appropriation	207 450
Charges	(15 829 392)
Final excess of income over expenditure	**2 059 041**

Pursuant to regulation 4.3 of the Financial Regulations, the amount of unpaid contributions should be deducted from this balance.

5. On this basis, the provisional cash surplus for the 2009-2010 financial period was determined to be €1,690,086. This amount is based on the audit report on the financial statements of the Tribunal for the period 2009-2010 (see SPLOS/223) and calculated as follows (in euros):

Credit	17 680 983
Reserve to finance additional appropriation	207 450
Charges	(15 829 392)
Cancellation of the 2007-2008 obligations (surrendered with the 2007-2008 cash surplus)	(72 713)
Unpaid contributions	(296 242)
Provisional cash surplus	**1 690 086**

C. Cash surplus

6. Under regulation 4.4 of the Financial Regulations, the cash surplus is determined by crediting to the provisional cash surplus any arrears of prior periods' contributions received during the financial period and any savings from the provisions made for unliquidated obligations for the financial period.

7. It should be noted that an amount of €176,704, forming part of the cash surplus for the financial period 2009-2010, has already been surrendered and deducted from the assessed contributions of the States parties for 2012 in

accordance with the decision taken by the twenty-first Meeting of States Parties (see SPLOS/231, para. 53). Taking this decision into account, the cash surplus for the financial period 2009-2010 is determined to stand at €1,873,979 as at 31 December 2011, as follows:

> Provisional cash surplus (€1,690,086) + arrears of prior periods' contributions received in 2011 (€251,923) + savings from the provisions made from unliquidated obligations (€108,674) – surrender of part of the cash surplus for the 2009-2010 financial period (SPLOS/203) (€176,704) = cash surplus to be surrendered to the States parties (€1,873,979).

8. The cash surplus, as determined by the Registrar in accordance with paragraph 6 above, was reviewed by the auditor on 27 January 2012. The auditor certified that the cash surplus for the 2009-2010 financial period as at 31 December 2011 amounted to €1,873,979 (see annex I to the present report).

D. Surrender of cash surplus

9. Under regulation 4.5, the cash surplus will be surrendered as follows:

(a) *Apportionment of cash surplus*

The cash surplus, determined as outlined above, will be apportioned among the States parties in proportion to their contributions as determined for the financial period 2009-2010, to which the surplus relates.

(b) *Surrender of cash surplus*

The cash surplus for the financial period 2009-2010 thus apportioned to the States parties will:

(i) Be surrendered to the States parties, provided that their contribution for the financial period 2009-2010 has been paid in full;

(ii) Be applied to liquidate first, in whole or in part, any arrears in contributions.

(c) *Retention of cash surplus apportioned but not surrendered*

Any cash surplus apportioned to the States parties but not surrendered owing to non-payment or partial payment of the contribution for the financial period in question will be retained by the Registrar until such time as the contribution for that financial period is paid in full.

10. In accordance with regulation 4.5 of the Financial Regulations, the Tribunal decided on 29 March 2012 that an amount of €1,873,979 would be surrendered and deducted from the contributions of States parties for 2013 and for earlier financial periods, where applicable.

II. Provisional performance report for 2011

11. In June 2010, the twentieth Meeting of States Parties approved a budgetary amount of €20,398,600 for the financial period 2011-2012 (SPLOS/217, para. 1).

12. Attached as annex II is the performance report for the year 2011, which is provisional since it concerns the first year (2011) of the 2011-2012 budget period.

13. As shown in the provisional performance report for 2011 (see annex II), the total expenditure for that year stands provisionally at €8,714,115, representing 78.42 per cent of the appropriations in the amount of €11,111,750 approved for 2011. The underperformance can largely be explained by savings amounting to €1,846,129 under "case-related costs". This amount will be used to cover expenses relating to deliberations in Case No. 16 in 2012. If the case-related costs (€3,228,400) were excluded, the performance rate for costs would be 93 per cent.

III. Report on action taken pursuant to the decision concerning budgetary matters for the 2011-2012 financial period taken by the twenty-first Meeting of States Parties

14. On the proposal of the Registrar, the twenty-first Meeting of States Parties decided in June 2011 that an amount of €38,593 which had been set aside in a special account to reimburse officials of the Tribunal obliged to pay national taxes in respect of the remuneration paid to them by the Tribunal in 2004 and subsequent years should be surrendered and deducted from the contributions of the State parties to the 2012 budget of the Tribunal in accordance with the relevant provision of the Financial Regulations and Rules of the Tribunal (see SPLOS/231, para. 52).

15. In accordance with that decision, the amount of €38,593 was surrendered and deducted from the assessed contributions of the States parties to the 2012 budget of the Tribunal, where applicable.

16. It was also decided that, since most of the additional cost of implementing the new salary system for the members of the Tribunal had been financed from savings under other budget lines in the budget section "judges", the unused balance (€176,704) of the additional appropriation (€207,450) would be surrendered on an anticipatory basis to the States parties and deducted from their contributions to the 2012 budget of the Tribunal in accordance with the Financial Regulations and Rules of the Tribunal (see SPLOS/231, para. 53).

17. In accordance with that decision, the amount of €176,704 was surrendered and deducted from the assessed contributions of the States parties to the 2012 budget of the Tribunal, where applicable.

IV. Adjustment of the special allowance of the President and that of the Vice-President when acting as President

18. The special allowance of the President of the Tribunal was fixed at $15,000 per annum by the fourth Meeting of States Parties in 1996 in line with the amount of special allowance paid to the President of the International Court of Justice. Likewise, the special allowance of the Vice-President of the Tribunal, when acting as President, was fixed at $94 per day.

19. The special allowance of the President of the International Court of Justice and that of its Vice-President, when acting as President, were increased to $25,000 per

annum and $156 per day, respectively, as of 1 January 2011, pursuant to General Assembly resolution 65/258.

20. In line with the principle that the level of remuneration and allowances of judges of the International Court of Justice is the comparator for the determination of the remuneration and allowances of judges of the Tribunal, and taking into account the established practice and decisions taken in this respect by the Meeting of States Parties, it is proposed that the special allowance of the President of the Tribunal and that of its Vice-President, when acting as President, be revised to $25,000 per annum and $156 per day, respectively, as of 1 July 2012. Should this proposal be approved, an additional amount of €4,647 required to implement the revised special allowance would be charged against the budget line "annual allowances". No additional budgetary appropriation is requested to finance this expenditure.

V. Report on action taken pursuant to the Financial Regulations of the Tribunal

A. Investment of funds of the Tribunal

21. In respect of the investment of funds of the Tribunal, regulation 9 of the Financial Regulations of the Tribunal stipulates the following:

> 9.1 The Registrar may make prudent short-term investments of moneys not needed for immediate requirements and shall inform the Tribunal and the Meeting of States Parties periodically of such investments.
>
> [...]
>
> 9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each fund or account.

22. During 2011, the Tribunal's funds were kept in JP Morgan Chase Bank and Deutsche Bank in United States dollars and euros as short-term investments, which are investments made for less than 12 months according to rule 109.1 of the Financial Rules of the Tribunal. The funds yielded interest amounting to €53,951 during 2011. This earned interest has been credited to miscellaneous income in accordance with regulation 9.2 of the Financial Regulations of the Tribunal.

B. Korea International Cooperation Agency trust fund

23. The Korea International Cooperation Agency (KOICA) offered to provide a grant of $150,000 pursuant to a memorandum of understanding signed between the Tribunal and KOICA on 9 March 2004. Its object is to finance the expenses of participants from developing countries in the Tribunal's internship programme.

24. In accordance with regulation 6.5 of the Financial Regulations of the Tribunal, a trust fund was subsequently established and a special euro bank account named "KOICA Grant" was set up with Deutsche Bank for this purpose. When the funds, amounting to $150,000, were received from KOICA in March 2004, they were converted into €120,600 on the basis of the United Nations exchange rate prevailing at the time.

25. In March 2006, the Tribunal received from KOICA its second contribution to the KOICA trust fund, in the amount of $100,000. This amount was converted into €84,400 on the basis of the United Nations exchange rate.

26. Following the signing of additional memorandums of understanding between the Tribunal and KOICA, further contributions in the total amount of €422,045 were received during the period 2007-2009. An amount of €213,645 was paid to the Tribunal in February 2007, €128,400 in May 2008 and €80,000 in June 2009 for the purpose of financing the internship programme of the Tribunal, the organization of regional workshops and the participation of students from developing countries in the summer academy organized by the International Foundation for the Law of the Sea.

27. The performance of the KOICA grant as at 31 December 2011, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5 of the Financial Regulations of the Tribunal, is as follows (in euros):

Contribution	0.00
Interest income	0.00
Total income	**0.00**
Expenditure on participants and authorized activity	(19 782.94)
Bank charges	(243.08)
Account receivable	(234.00)
Reserves from prior periods	35 203.92
Bank balance	**14 943.90**

C. Nippon Foundation trust fund

28. In March 2007, the Tribunal and the Nippon Foundation signed the Nippon Foundation grant agreement. Pursuant to the agreement, the Nippon Foundation agreed to contribute an amount of €200,000 to the Nippon Foundation-International Tribunal for the Law of the Sea Capacity-Building and Training Programme on Dispute Settlement under the United Nations Convention on the Law of the Sea.

29. In accordance with regulation 6.5 of the Financial Regulations of the Tribunal, a trust fund was subsequently established and a special euro bank account named "Nippon Foundation Grant" was set up with Deutsche Bank. The purpose of the grant is to finance the expenses of participants from developing countries in the aforementioned programme.

30. The second contribution in the amount of €200,000 was made to the Tribunal on 27 March 2008 and the third, in the same amount, on 27 March 2009. Two additional contributions in the amount of €230,000 each were received on 26 March 2010 and 30 March 2011. The performance of the Nippon Foundation Grant as at 31 December 2011, which is to be reported to the Meeting of States Parties in accordance with regulation 6.5 of the Financial Regulations of the Tribunal, is as follows (in euros):

Contribution of 30 March 2011	230 000.00
Interest income	1 736.00
Total income	**231 736.00**
Expenditure on participants and authorized activity	(229 390.00)
Bank charges	(329.00)
Account receivable	(5 897.00)
Loss on exchange	(9.00)
Investment of funds	(180 000.00)
Prior period reserves	208 142.00
Bank balance	**24 253.00**
Investment of funds	180 000.00
Available balance	**204 253.00**

D. Trust fund for the law of the sea

31. At its twenty-eighth session, the Tribunal approved the Registrar's proposal to establish a new trust fund for the law of the sea and decided to refer it to the Meeting of States Parties for its consideration in accordance with regulation 6.5 of the Financial Regulations of the Tribunal.

32. As provided for in its terms of reference, the trust fund is intended to promote the advancement of human resources in developing countries in law of the sea and maritime affairs in general. Contributions to the trust fund will be used to provide financial assistance to applicants from developing countries in respect of participation in the Tribunal's internship programme and the summer academy. States, intergovernmental organizations and agencies, national institutions, non-governmental organizations and international financial institutions as well as natural and juridical persons are invited to make voluntary financial or other contributions to the trust fund.

33. Two contributions to the fund, in the amounts of €25,000 and €15,000, were made in April 2010 and October 2011 by a company from the Republic of Korea operating in Hamburg and by the Korean Maritime Institute, respectively. Bank charges amounting to €309 have thus far been recorded and the available balance stood at €39,691 on 31 December 2011.

Annex I

Letter dated 27 January 2012 from BDO Deutsche Warentreuhand to the Registrar of the International Tribunal for the Law of the Sea

Certification of the cash surplus for the financial period 2009-2010 of the International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea (referred to as the "Tribunal" in the following) assigned us to examine the cash surplus of the Tribunal for the financial period 2009-2010.

The determination of the cash surplus according to the Financial Regulations of the Tribunal is the responsibility of the Registrar of the Tribunal. Our responsibility is to examine if the cash surplus is determined according to the Financial Regulations of the Tribunal.

Based on our examination the attached cash surplus of the Tribunal for the financial period 2009-2010 (appendix I) amounts to €1,873,979 and was determined in conformity with the Financial Regulations of the Tribunal.

For the performance of the assignment and our responsibility — including those to third parties — the general terms of assignment for auditors and audit companies as of 1 January 2002 as well as the special conditions for the increase of liability in connection with the general terms of assignment are applicable. These terms are attached in appendix II.

(*Signed*) Dirk **Beecker**
Wirtschaftsprüfer

(*Signed*) Antonius **Herbers**
Wirtschaftsprüfer

Appendix I

International Tribunal for the Law of the Sea: cash surplus for the financial period 2009-2010

Provisional cash surplus, 31 December 2010

Final excess of income over expenditure 2009-2010	2 059 041
Cancellation of the 2007-2008 obligations surrendered with 2007-2008 cash surplus	-72 713
Contributions receivable from States parties with respect to 2009-2010	-296 242
Provisional cash surplus 2009-2010	**1 690 086**

Cash surplus, 31 December 2011

Surrender of savings in accordance with SPLOS/224	-176 704
Prior periods' contributions received in 2011	251 923
Savings from 2009-2010 obligations	108 674
Cash surplus 2009-2010, 31 December 2011	**1 873 979**

Appendix II

General engagement terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften [German Public Auditors and Public Audit Firms] as of 1 January 2002

[For the text of appendix II, see SPLOS/175, annex I, appendix II. The second paragraph under "Special conditions for the increase of the liability under the general engagement terms as of 1 January 2002" has been amended to read as follows:

> If, in the client's opinion, the foreseeable contractual risk will be considerably higher than €5 million, BDO Deutsche Warentreuhand Aktiengesellschaft will agree, at the client's request, to offer to the client an increased liability limit if and to the extent the liability insurance for the increased amount can be obtained from a German professional liability insurer. The premium expense arising out of an increased liability will be subject to a separate agreement.]

Annex II

Provisional performance report, 2011

	Part Section	Objects of expenditure	2011 approved budget	2011 expenditure (as at 31/12/2011)	2011 unliquidated obligations (as at 31/12/2011)	2011 total expenditure (as at 31/12/2011)	Balance	Total expenditure/ approved budget (percentage)
1	A	**RECURRENT EXPENDITURE**						
2	1	**Judges**	**2 460 350**	**2 363 120**	**3 341**	**2 366 461**	**93 889**	
3		Annual allowances	1 537 550	1 537 336	0	1 537 336	214	99.99
4		Special allowances	389 350	361 002	0	361 002	28 348	92.72
5		Travel to session	138 750	125 282	0	125 282	13 468	90.29
6		Judges' pension scheme	300 000	296 325	0	296 325	3 675	98.78
7		Common costs	94 700	43 175	3 341	46 516	48 184	49.12
8								
9	2	**Staff costs**	**3 661 500**	**3 385 153**	**8 278**	**3 393 431**	**268 069**	
10		Established posts	2 433 400	2 364 891	106	2 364 997	68 403	97.19
11		Common staff costs	1 017 100	863 033	7 383	870 416	146 684	85.58
12		Overtime	16 200	15 024	0	15 024	1 176	92.74
13		Temporary assistance for meetings	99 700	78 731	135	78 866	20 834	79.10
14		General temporary assistance	59 050	34 991	654	35 645	23 405	60.36
15		Training	36 050	28 483	0	28 483	7 567	79.01
16	3	**Representation allowance**	**5 650**	5 495		**5 495**	**155**	97.26
17	4	**Official travel**	**92 650**	47 657	0	**47 657**	**44 993**	51.44
18	5	**Hospitality**	**6 950**	4 157	0	**4 157**	**2 793**	59.81
19	6	**Operating expenditures**	**1 416 550**	**1 217 726**	**131 737**	**1 349 463**	**67 087**	
20		Maintenance of premises (incl. security)	1 048 050	902 678	101 889	1 004 567	43 483	95.85
21		Rental and maintenance of equipment	180 700	167 196	13 077	180 273	427	99.76
22		Communications	98 600	77 870	6 852	84 722	13 878	85.92
23		Misc. services and charges (incl. bank charges)	21 500	21 225	0	21 225	275	98.72
24		Supplies and materials	61 950	44 907	9 919	54 826	7 124	88.50
25		Special services (external audit)	5 750	3 850		3 850	1 900	66.96
26	7	**Library and related costs**	**162 300**	**116 304**	**15 438**	**131 742**	**30 558**	
27		Library — procurement of books and publications	117 300	104 185	11 664	115 849	1 451	98.76
28		External printing and binding	45 000	12 119	3 774	15 893	29 107	35.32

	Part Section	Objects of expenditure	2011 approved budget	2011 expenditure (as at 31/12/2011)	2011 unliquidated obligations (as at 31/12/2011)	2011 total expenditure (as at 31/12/2011)	Balance	Total expenditure/ approved budget (percentage)
29								
30	B	**NON-RECURRENT EXPENDITURE**						
31	8	Furniture and equipment						
32		Purchase of equipment	**77 400**	25 299	8 139	**33 438**	**43 962**	43.20
33								
34	C	**CASE-RELATED COSTS**	**3 228 400**	**1 369 300**	**12 971**	**1 382 271**	1 846 129	42.82
35	10	**Judges**	**2 306 800**	**898 586**	**0**	**898 586**	**1 408 214**	38.95
36		Special allowances	1 880 100	773 657	0	773 657	1 106 443	41.15
37		Compensation to judges ad hoc	196 000	96 019	0	96 019	99 981	48.99
38		Travel to meetings, incl. judges ad hoc	230 700	28 910	0	28 910	201 790	12.53
39	11	**Staff costs**	**921 600**	**470 714**	**12 971**	**483 685**	**437 915**	52.48
40		Temporary assistance for meetings	876 600	452 171	12 971	465 142	411 458	53.06
41		Overtime	45 000	18 543	0	18 543	26 457	41.21
42	12	**Miscellaneous**	**0**	0		**0**	**0**	
43								
44	D	**WORKING CAPITAL FUND**	**0**	0		**0**	**0**	
45								
46		**TOTAL**	**11 111 750**	**8 534 211**	**179 904**	**8 714 115**	**2 397 635**	**78.42**